

### **REMARKS**

An Office Action was mailed July 28, 2009. This response is timely. Any fee due with this paper, including any necessary extension fees, may be charged on Deposit Account 50-1290.

#### **Summary**

Claims 1-38 were examined.

A Terminal Disclaimer is submitted to overcome the rejection. Claim 35 is amended to correct a formatting error. No new matter has been added.

#### **Rejections under Double Patenting**

Claims 1-38 stand rejected on the grounds of non-statutory obviousness-type double patenting with respect to claims 1 and 2 of U.S. Patent No. 6,524,187 and claims 1-5 of U.S. Patent Publication 2001/0008851.

Claims 1-16 and 21-38 stand rejected on the grounds of non-statutory obviousness-type double patenting with respect to claims 1 and 2 of U.S. Patent No. 6,524,187 and claims 1-5 of U.S. Patent Publication 2001/0008851.

A Terminal Disclaimer disclaiming an enforceable portion of claims 1-38 beyond the expiration date of U.S. Patent No. 6,524,187 is being filed contemporaneously.

The application published as U.S. Patent Publication 2001/0008851 was granted as U.S. Patent No. 6,524,187. Thus, the Terminal Disclaimer with respect to the '187 patent is sufficient. In the alternative, Applicant respectfully submits that no rights accrue to a U.S. Patent Publication. Thus, respectfully, statutory obviousness-type double patenting, intended to protect the public from an unwarranted extension of the patent term extension of a pending application, does not exist with respect to the U.S. Patent Publication 2001/0008851.

In view of the remarks set forth above this application is in condition for examination ready passage to allowance which is respectfully requested. However, if for any reason the examiner

should consider this application not to be in condition for examination or allowance, the examiner is respectfully requested to telephone the attorney at the number listed below prior to the issue of further action.

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Respectfully submitted,

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**CUSTOMER NUMBER 026304**

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